

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
CORNERSTONE EDUCATIONAL SERVICES, INC., t/a CORNERSTONE ACADEMY	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 05-030C

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DECISION AND ORDER

On October 24, 2005, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Cornerstone Educational Services, Inc., t/a Cornerstone Academy, Petitioner, for a conditional use for a private academic school to be located in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Section 131.N.45 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas M. Meachum, Esquire, represented the Petitioner. Michael Zeher and Patrick Richardson, Jr., testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owner of the subject property, known as 17455 Old Frederick Road, which is located in the 4th Election District on the south side of Old Frederick Road and west of West

Watersville Road in Mt. Airy, Maryland (the “Property”). The Property is referenced on Tax Map 2, Grid 19, as Parcel 13.

2. The Property is a quadrilateral-shaped lot containing about 8.74 acres with approximately 887 feet of frontage on the curved right-of-way for Old Frederick Road. The Property is about 425 feet deep and slopes down about 44 feet from the northwest corner to the southeast corner. The Property is unimproved and predominantly open with some trees and vegetation along the perimeter.

3. Vicinal properties include:

(a) To the north of the Property across Old Frederick Road is Parcel 112, which is improved with a two-story, single-family detached dwelling that fronts on Old Frederick Road. East of Parcel 112 are several residential lots that front on West Watersville Road.

(b) To the east of the Property is a steep embankment that rises up to the West Watersville bridge over U.S. Interstate Route 70. East of the bridge is a residential property facing Old Fredrick Road.

(c) To the south of the Property across I-70 is Parcel 168, the site of a home based contractor use approved in BA Case No. 95-13E.

(d) To the west of the Property is Parcel 111, a BR-zoned lot that is the site of an outdoor contractor storage yard. The driveway for this storage yard is adjacent to the northwest corner of the Property and was granted a variance in BA Case No. 04-15V.

4. In BA Case No. 04-043C&V, Mt. Airy Presbyterian Church (the “Church”) received approval for a conditional use and variances to develop a new religious facility on the Property.¹

¹ See the Decision and Order in BA Case No. 04-043C&V for a description of the religious facility development and uses approved in that case.

Subsequent to the issuance of the Decision and Order in BA Case No. 04-043C&V, the Church submitted an amended plan which, among other things, reduced the size of the church building to a one-story, 11,116 square foot building, reduced the number of sanctuary seats to 264 seats, reduced the number of parking spaces to 88 spaces, and eliminated one of the two previously proposed access points (see Amended Conditional Use Plan dated August 30, 2005). The Department of Planning and Zoning determined that the Church's Amended Conditional Use Plan is in substantial compliance with the original conditional use plan.

5. The Petitioner now proposes to operate a private academic school within the proposed church building on the site. The school, which will specialize in teaching children with learning differences, will operate when the church is not. Its hours will be September through June, from 7:45 a.m. to 3:00 p.m. Monday through Friday except for holidays. Occasional night meetings will occur between 7:00 p.m. and 9:00 p.m.

The school will have an enrollment not to exceed 100 students. The school will employ a maximum of 25 employees. Students will be dropped off; no bus service will be provided.

6. The Property will be served by private water and septic facilities. The 2000 General Plan designates the Property as a "Rural Conservation Area." Old Frederick Road is a major collector with two travel lanes with 40 feet of paving within an 80-foot wide right-of-way and a posted speed limit of 50 miles per hour. Visibility from the proposed driveways is more than 700 feet to the west and 800 feet to the east.

7. Mr. Zeher, the chairman of the board of directors of the Cornerstone Academy, testified that the academy is approved for grades one through twelve, but expects that most students will be in

the high school and middle school age groups. Patrick Richardson, the Petitioner's civil engineer, testified that a deceleration lane will be installed at the entrance to the Property.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan: The Howard County General Plan designates the area in which the Property is located as "Rural Conservation." Private school facilities are commonly found in rural residential areas. The proposed use will be located on an 8.7-acre site and is not out of scale with the other uses in the area. The building and parking will be concentrated in the northwest portion of the site and will be well separated from vicinal properties. The intensity of the use will be low to moderate. The facility will be located on a major collector roadway and near Route Interstate 70. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

Although the proposed private academic school will be located on the same property and use the same facility as an approved religious facility use, the two conditional uses will not operate at the same time. Because the use will not conflict, the overall intensity and scale of uses will be appropriate given the proposed buffers and setbacks, as required by Section 131.B.1.b.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine

whether the proposed uses at the Site will have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed school has adverse effects in the RC zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the RC district.

The Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a private academic school use in the RC district:

1. Physical Conditions. The proposal consists of a typical private school facility and associated parking and outdoor play areas for up to 100 students. The proposed uses will be conducted primarily within the proposed building and consist of activities that are normally associated with a private school. School uses will be primarily on weekdays with some meetings on weekday evenings. Parking lot lighting will be directed downward and away from all adjacent properties. While the play area and athletic fields will generate some noise, they will be used only during daylight hours and are located in the south and southeastern portions of the Property, well away from vicinal residential properties. The use will not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a private academic school in an RC zoning district, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. Although the size of the proposed structure is large, it is not

out of scale with the Property or other uses in the area. In addition, it is located toward the center of the west side of the Property and will be well separated from the roadway and vicinal properties. The proposed perimeter Type “B” landscaping will buffer the building from the residential properties to the north. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner proposes to install 88 parking spaces. The minimum required number of parking spaces for elementary and middle schools is one space per six students, while the minimum number of spaces for high schools is one space per three students. Even if the higher minimum is used, the school would only be required to provide 33 spaces. Although the parking spaces will encroach into the setbacks along the front and west lot lines, they will be well separated from vicinal residential properties due to the wide right-of-way for Old Frederick Road. The Petitioner will install Type “B” landscaping to buffer the parking area. The refuse area will be located in the southwest corner of the parking area and screened. Consequently, parking areas, driveways, and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The proposed 30-foot wide driveway will provide safe access with adequate sight distance. Given that Old Frederick Road is a major collector with a 50 mph speed limit, I find that the installation of a deceleration lane is appropriate, in accordance with Section 131.B.2.d.

II. Specific Criteria for Schools, Colleges, Universities – Private (Academic) (Section 131.N.45).

1. The proposed school will enroll not more than 100 students on the 8.7-acre site, which is a density of 11.5 students per acre. The proposed use will therefore not exceed the maximum density of 100 pupils per acre for a lot over three acres as required by Section 131.N.45.a.

2. The proposal does not include residence accommodations; therefore, Section 131.N.45.b does not apply.

3. The school will be housed within a one-story building that will not exceed the height limitations for the RC zone; therefore, Section 131.N.45.c does not apply.

4. No bus service is proposed; therefore, Section 131.N.45.d does not apply.

5. The outdoor play areas and fields will be located to the south and east of the proposed building and will be well separated by distance from any vicinal residential properties. Outdoor uses will therefore be located to shield residential properties from noise and nuisance in compliance with Section 131.N.45.e.

6. No residentially-zoned properties abut the subject Property; consequently, Section 131.N.45.f does not apply.

7. Approximately 76% of the site within the building envelope will be green space, which exceeds the minimum of 20% required by Section 131.N.45.g.

8. The Property has frontage on and direct access to a collector road designated in the General Plan, Old Frederick Road, in accordance with Section 131.N.45.h.

ORDER

Based upon the foregoing, it is this **15th day of September, 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Cornerstone Educational Services, Inc., t/a Cornerstone Academy, Petitioner, for a conditional use for a private academic school to be located in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **GRANTED**;

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property, and **subject to the following condition**:

1. The Petitioner will install a deceleration lane for the proposed driveway entrance.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.